Supreme Court, U.S.
FILED

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No.

IN THE
Supreme Court of the United States

GAIL PARKERSON,
PETITIONER,

v.

RICHARD MCMURTREY, SANDRA MCMURTREY, ERNIE'S WRECKER & BODY SHOP, INC., & JOHN DOE NO. 1 AS GARLAND COUNTY, ARKANSAS,
RESPONDENTS.

On Petition for Writ of Certiorari
To the Arkansas Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner, as Plaintiff in the civil case, requested the Judge recuse, given his recent questionable attempt at prosecuting her, in his prosecutorial role, before becoming the Judge in this civil case. He stated he would not recuse, while down from the bench, in his robe, very close to the parties, with no transcript being taken. All of Petitioner's Motions were denied, unanswered, or dismissed. Presenting questions like;

Was the Due Process Clause of the Fourteenth Amendment violated with the Judge's refusal to recuse, given his recent attempt, in a prior case, to prosecute the Petitioner, in his prior prosecutorial capacity?

Were Due Process rights further denied, as indicated by all of her motions being denied, unanswered, or dismissed by this same Judge, who had full discretion to rule on all pertinent rulings?

Did the Arkansas Supreme Court and Court of Appeals fail to uphold the requirement, that a judgment be reversed and remanded for a new trial, when a complete transcript of the circuit court proceedings could not be obtained by Petitioner from the circuit court for appeal with the entire record designated?

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF
CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinions of the lower courts in my case have not been published and have not been designated for publication. Their location in the appendix for each decision appears as follows:

Cases from State Courts:

The opinion of the highest state court to review the merits appears at Appendix _1_ to the petition and is not designated for publication, and is unpublished. The Amended opinion of the 18th Circuit East as Garland County, Arkansas Circuit Court appears at Appendix **_11_** to the petition and has not been designated for publication, and is unpublished. The Arkansas Court of Appeals Order of denial of Petitioner's Motion to Correct the Record appears at Appendix **_10_**. The Circuit Court's Order denying Petitioner's Motion for Reconsideration 10/16/2007 appears at Appendix **_15_**. The Circuit Court's original Order to Dismiss and grant Quiet Title to Respondent appears **_17_**. The Circuit Court's Denial Order for Petitioner's Motion for Reconsideration appears at **_21_**. The Circuit Court's Denial of Petitioner's Motion for Reconsideration 4/14/2006 appears at Appendix **_23_**. The Arkansas Court of Appeals

denial Order for Petition for Rehearing appears at Appendix **26** to the petition. The Arkansas Supreme Court's denial Order of Petition for Review appears at Appendix **27**.

JURISDICTION STATEMENT

This is a case coming from state courts: The date on which the highest state court decided my case was February 11, 2009. A copy of that decision appears at App. 1. A timely petition for rehearing was thereafter denied on April 1, 2009. A copy of that decision appears at App. 2. A timely petition for review was denied by the Arkansas Supreme Court on September 10, 2009. A copy of that decision appears at App. 27.

The jurisdiction of this Court is invoked under **28 U.S.C. § 1257 (a)**; "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **Fourteenth Amendment Rights under the U.S Constitution, Due Process Clause for procedural due process**, spells out the right for a fair trial with all that this entails.

2. **U.S. Code Title 28 (2004) Section 455 (a);** the statute requires recusal in any case "in which the judge's impartiality might reasonably be questioned." "The First, Fifth, Sixth, Tenth, and Eleventh Circuits has said that close questions should be decided in favor of recusal." The Supreme Court has held that a violation of **Section 455(a)** takes place even even if the judge is unaware of the circumstances that created the appearance of impropriety. **Section 455(b)** "requires a judge to disqualify himself where he has a personal bias or prejudice concerning a party..."

3. **"Federal Rules of Civil Procedure 60 (b)** authorizes relief from a final judgment as being an appropriate remedy for a trial court's improper failure to recuse, whether or not the judge actually know of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." **Litjeberg v. Health Services Acquisition Corp. 5, 17, 18, 41, 66, 68, U.S. 847 (1988).**

STATEMENT OF THE CASE

Petitioner filed with the Garland County Circuit Court, in Hot Springs, Arkansas, to be granted Quiet Title to a very small portion of land located between her home and toward the street, which her Parents and her had gained title to by adverse possession from 1959 to 1966, for the required seven year period, through to the current date, never giving up possession as clearly seen and acknowledged for decades. **McLaughlin v. Sicard, 63 Ark. App. 212, 977 S.W. 2d (1998), White River Levee District v. Reidhar, CA 01-466 S.W.3d Arkansas Court of Appeals, Dec. 12, 2001 paragraph #2**; "a claimant may "tack on the adverse possession time of an immediate predecessor in title," **Pallins v. Pettus, 249, Ark. 67 458, S.W. 2d 724 (1970).** She also filed for restitution of the taking and keeping of her 1978 Corvette, without her permission, from where it was parked on her claimed front yard of the old abandoned county road, by the Respondents McMurtreys and Ernie's Wrecker & Body Shop, Inc., who took it from Petitioner's front yard, kept it and destroyed it in the process.

The case first began under one Judge, but was given to another Judge, though Petitioner immediately voiced her objection to the court, after the announcement of the name of the new Judge, as involving a conflict of interest as reason for this new Judge to recuse. Petitioner's due process rights were denied her, beginning with the Circuit Court Judge's refusal to recuse, when he had just failed at his attempt to prosecute this Petitioner, in his prior prosecutorial capacity, though unsuccessful in

his attempt, with it being dismissed by a Judge from out-of-town on May 19, 2004, with this civil case being filed by Petitioner on March 26, 2004. When he failed to prosecute her, and the case was dismissed against her, this same individual became the Judge in this Petitioner's civil action, with her as Plaintiff, regarding her property title by documented adverse possession, held hostilely against all others, causing title to be valid in the Petitioner and over the taking of her 1978 Corvette by Respondents McMurtreys and Ernie's Wrecker & Body Shop, Inc. **U.S. Code Title 28 (2004) Section 455 (a); the statute requires recusal in any case "in which the judge's impartiality might reasonably be questioned." The First, Fifth, Sixth, Tenth, and Eleventh Circuits have said that close questions should be decided in favor of recusal."**

> "The Supreme Court has held that a violation of **Section 455(a)** takes place even if the judge is unaware of the circumstances that created the appearance of impropriety. **Section 455(b)** "requires a judge to disqualify himself where he has a personal bias or prejudice concerning a party..."

Petitioner knew, without question, that the Judge was fully aware of the extraordinary circumstances for reason of the necessity for him to recuse, given the timing of the cases.

The refusal of the Circuit Court Judge to recuse, and the manner in which the Judge came out into the Courtroom, in his robe, close

to the parties, looking straight at the Petitioner, as he stated he was not going to recuse, served to greatly intimidate Petitioner, given the recent circumstances she has endured, between her and this Judge, which was the start of the series of due process rights being denied this Petitioner in this case. She did not know, at the time, that no audio or video tape was being utilized in the courtroom to document the Judge's actions. It wasn't until Petitioner designated and ordered the complete transcript from the Circuit Court, that she found out no record was available of those circumstances at that first Hearing under the current Judge. When the Judge refused to recuse, Petitioner did the best she could, though all of her Motions were either denied or ignored, including her Motion to Continue the Trial Date, given the fact that she was not aware a pre-trial hearing and trial date as planned to be utilize, with no notice sent by the Court, as admitted by the Court, and her not finding out about the pre-trial hearing until after it had taken place, or the trial date as enacted, until 4 to 5 days before it took place, on the Monday after Easter Holidays, with confusing Court statements given, the fear factor involved at that hearing, and the assurance by the Circuit Court Clerk's Office to Petitioner, when Petitioner contacted them and asked, that no trial date had been set. This set the stage for Petitioner's due process rights to be denied:

1. All decisions made by the Court were left to the discretion of a biased Judge, who refused to recuse from the case after prior dealings of his attempted and questionable

prosecution of the Petitioner.

2. All Motions made by Petitioner to this Judge, as the bench, were denied or went unanswered, even when presented orally and by Motion brought by Petitioner.
In a bench trial, where the Judge's role is even more pivotal than in a jury trial, like **Alexander v. Primerica Holding, Inc., 10 F. 3d 155 (3rd Cir. 1993)** the Court of Appeals noted the following in that case;

> "We cannot overlook the fact that this is a non-jury case, and that [the judge] will be deciding each and every substantive issue at trial. When the judge is the actual trier of fact, the need to preserve the appearance of impartiality is especially pronounced."

Id. At 166. Heeding the Court's warning, courts of appeal have been slow to deem a failure to recuse harmless error.
Petitioner's Motions which were denied or unanswered included;

(a) Petitioner's Motion for Judgment on the Pleadings. **Arkansas Rules of Civil Procedure, Rule 12 (c) Motion for Judgment on the Pleadings,**"any party may move for judgment on the pleadings."

Arkansas Rules of Civil Procedure Rule 56 (a) (c) (2); The Judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if

any show that there is no genuine issue as to any material fact, that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion." **Wallace v. Broyles, 332 Ark. 189 (1998).**

(b) Petitioner's Motion to Inspect the subject property claimed, showing the boundaries and car's location, was given no ruling to reserve for appeal. Note: Respondents did not want the court to view the property. **McLaughlin v. Sicard, 63 Ark. App. 212, 977 S.W. 2d (1998)** Petitioner's Motion to Inspect the Property was not ruled upon though presented by her in her written Motion to Inspect, requested at Hearing, and brought up at trial as being a necessary part of her evidence. Respondents brought up other properties, objected to in court by the Petitioner, which had nothing to do with the case. Objection denied. The Courts never understood what property they denied Petitioner and granted Respondents.

(c) Denied Motion to Continue the Trial Date, when no continuance had ever been granted Petitioner, in the case, and she was diligent in her filings. **Arkansas Rules of Civil Procedure, Rule 40 (b);** "the court may upon motion and for good cause shown, continue any case previously set for trial."
Petitioner offered good cause for the Continuance by Motion and Affidavit.

(d) Denied written notice sent by the

court of the pre-trial and trial dates, by no written notice being sent as admitted by the Circuit Court. **Jones v. Vowell, et al, Arkansas Court of Appeals CA 06-107, 93 Ark. App. 193, S.W.3d (June 6, 2007)** Appellant Jones was successful in having her case reversed and remanded, because she did not receive Notice of a Hearing and the transcript offered no indication that notice was sent to her in that case. 4/14/2006 Order. **App. 23**

(e) Denial of right to present substantial evidence by Petitioner of the other side's (Respondents') main witness in the case by deposition, which totally supported Petitioner's claim of title by adverse possession requirements as fully being met, with even the Arkansas Court of Appeals, stating in their Opinion, this to be improper of that Judge. **App. 5,6** **Rule 401, Arkansas Rules of Evidence;** "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Petitioner was not allowed to present the subject property itself as relevant evidence, nor was she allowed to present deposition testimony from Respondents' main witness by deposition as evidence in her case.

Rule 32, (a) (3) Arkansas Rules of Civil Procedure; "The deposition of a witness whether or not a party, may be used by any party for any purpose if the court finds that A. the witness is dead or B. is over 100 miles away," where B. was the case.

(f) Petitioner's right to a trial by jury denied. **Arkansas Rules of Civil Procedure, Rule 38 (a);** right to a trial by jury, denying her Constitutional right to a fair trial. **Ayers v. State, 334 Ark. 258, 975 S.W. 2d 88 (1998)** and **Matthews v. State, 313, Ark. 327, 854 S.W.2d 339 (1993).**

> **Tygart v. Kohler, 82 Ark. App. 380, 109 S.W.3d 147 (2003).....**"When a civil case is tried by a circuit court sitting without a jury, our inquiry on appeal is not whether there is substantial evidence to support the factual findings of the court, but whether the findings are clearly erroneous, or clearly against the preponderance of the evidence." "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed."

(g) Denial of representation for Petitioner, with no knowledge of the trial date or knowledge of the proper phrase to enter evidence into the Court Record at trial, even though her case was strong and well documented. **App. 6**

(h) Denied Motion for a new trial, even

though Petitioner's Motion was submitted with justification for relief by Affidavit. This was another ruling, left to the Judge's discretion, on whether to grant a new trial or not, which he denied by Order, referring to Petitioner (Plaintiff) as "Defendant." **App. 24**

Arkansas Rules of Civil Procedure, Rule 59 (a); grounds for a new trial. **(a)(1)** "any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial."

Facts were submitted by the Petitioner to the Court by timely submitted written Motions.

(i) Denial of her Renewed Motion to Recuse, with good cause established and submitted by Motion and Affidavit.

(j) Federal Court Rulings cited by Petitioner in her first argument to the Appeals Court (Arg. Page 2), appeared to make no difference to the Appeals Court or Arkansas Supreme Court in regard to the necessity of the judge to recuse. **App. 10**

3. "**Federal Rules of Civil Procedure 60 (b)** authorizes relief from a final judgment as being an appropriate remedy for a trial court's improper failure to recuse, whether or not the judge actually know of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." **Litjeberg v. Health Services Acquisition Corp. 5, 17, 18, 41, 66, 68, U.S. 847 (1988).** Note: The Garland County, Arkansas, County Judge gave Affidavit and court witness testimony, that

Garland County, Arkansas was not contesting Petitioner's claim, as the major portion of the claim was a small section of an old county road, where the 1978 Corvette had been parked for decades, after the County Judge went out and personally viewed the property and its location at Petitioner's request. The rest of the claim, other than the small portion of road, is a short distance of Petitioner's driveway, never ever having been referred to as an easement, and the small area around it. **Neyland v. Hunter, 282 Ark. 323, 668 S.W.2d 530 (1984), and Hart v. Sternberg, 205 Ark. 929, 171 S.W. 2d 475 (1943);** "Adverse possession maintained for the statutory seven year period vests title in the adverse possessor as completely as would a deed from the holder of records."

Even in the Amended Order, **App. 14**, and the Original Order, **App. 17** the Judge referred to the "gravel" driveway, when stating it was now a private easement. Note: In Mrs. Conroy's Deposition (Respondent's Main Witness), she stated that the Parkerson driveway had been graveled and utilized by the Parkersons, long before the Conroys ever moved there in 1976. **App. 14** And it had never been referred to as an easement, but instead, part of the Parkerson front yard and driveway as easily seen.

When the Petitioner appealed her case and designated the entire record, discovering that there was no record of the Judge's words or actions at his first hearing, she submitted a **Motion to Correct the Record** with the

Arkansas Court of Appeals and based her request on the Arkansas **Supreme Court Administrative Order #4**, on 5/02/2008, which states, "the circuit court is to keep a record of all proceedings involved in a circuit court case, unless it is waived by the parties involved." However, Petitioner's Motion was denied by the Arkansas Court of Appeals on 6/04/2008, with no explanation given. **App. 10**

4. Petitioner lost her appeal in the Arkansas Court of Appeals, even though it was stated by them, that she had a "strong case." That Court cited the facts incorrectly. **App. 6** She was then denied her Petition for Rehearing, **App. 26**, and her Petition for Review by the Arkansas Supreme Court on September 10, 2009. **App. 27**

5. Petitioner sees the allowing of the taking of her property, by the taking of her real estate and her 1978 Corvette from her front yard, within feet of her home, with the Respondents being granted quiet title to portions of the adverse claim of the title that Petitioner and her Parents already held, as having been lawfully gained by them for about a fifty year time frame, with the Respondents not even moving in the area until 2002, with the Court ruling, as strictly in violation of her **Due Process Rights of the Fourteenth Amendment of the U.S. Constitution**. Because, with all requirements met in 1966, obtaining title by adverse possession, of the small area in the undeveloped country setting, before possession, along with Respondents' main witness, by deposition, backing up Petitioner's meeting of requirements for that obtained title by adverse possession, the

Petitioner and her Parents had title vested in them as considered as strong as any deeded title in Arkansas. **McLaughlin v. Sicard, supra.** And her car was parked on that claimed portion, which the Garland County Judge had already stated by Affidavit and by trial testimony, that the County was not contesting as Petitioner's claim of belonging solely to her as her front yard. And Respondents stated, they made no claim of the old road bed, which is exactly where Petitioner's car was located. This was just one of the facts, that the Court of Appeals failed to see, along with the time the property was utilized for the parked car. That Court stated the Corvette had been parked there since 1990, when in fact, it was parked there before 1980, as the record states, which makes a big difference in the adverse possession claim.

At that first Hearing, where the Plaintiff was first intimidated by this Judge's actions and refusal to recuse, a pre-trial hearing date and trial date were given, though confusing mistakes in dates and courts were made by the Judge. Also, the Judge brought up mediation, where Petitioner believed that this would be done instead of any pre-trial hearing or trial. That with no notice for either, sent in writing by the Court, which had always been the practice of that Circuit Court, Petitioner was not aware of, and so missed the Pre-trial hearing. **App. 3** And she did not find out about the trial date being utilized, until four or five days before the Monday trial date, held right after Easter.

So, the day of the civil trial, none of this Petitioner's Motions, involving her evidence, like

Motion to Inspect her nearby property, had been ruled upon and so obviously denied, since the Court did not go view the property to see its exact location. The Appeals Court stated, in their Order **App. 5**, it was not reserved for appeal, since Petitioner had not obtained a ruling on her Motion in the Circuit Court. However, Petitioner argued, that the sheer fact that the court did not go view the property would be a denial of her Motion. Most of her witnesses, such as the former Circuit Court Clerk's witness of going to Petitioner's property in 1981 to view exactly what her adverse possession claim included, as requested he do, and the car salesman who sold her the 1978 Corvette in 1979, as well as others, were not there on her behalf, since she knew of no trial date to include for any subpoena.

The trial transcript indicates how the Judge appeared to be representing the Respondents in the case. He was cordial to them, as well as helpful in suggesting what they do for their case, while at the same time, being quite short with the Plaintiff, and again continuing his open intimidation of her. The Judge refused to allow Petitioner to introduce specific statements from Respondents' main witness's deposition testimony, which clearly and precisely supported Petitioner's and her Parents' claim of adverse possession. At trial, the Judge even asked Respondent Ernie's Wrecker & Body Shop, Inc. if he would like a directed verdict.

The Judge dismissed Petitioner's case, including the stealing of her Corvette, and granted Respondent's Counter-Claim for Quiet

Title to sections of property already held by title by the Petitioner. After the trial, Petitioner filed a timely Objection to the Order, with a Motion for New Trial and Renewed Motion to Recuse. The Judge denied her Motions. **App. 21**

Petitioner timely filed her Notice of Appeal and Designation of the entire court record. In receiving the record, Petitioner discovered mistakes and omissions in the record. She filed her **Motion to Correct the Record**, in the Arkansas Court of Appeals, which was denied by them. **App. 10** That this Court dismissed the Appeal, because the Judge's Order lacked proper certification and adjudication of all parties. Once another Judge corrected that, Petitioner again filed another appeal of the same case, which she lost, **App. 1**, with her Petition for Rehearing of that Court denied, **App. 26**, as well as her Petition for Review denied by the Arkansas Supreme Court. **App. 27**

That it basically comes down to the question of if the Circuit Court Judge should have recused from a civil case, where he had, just prior to his presiding over the civil case, attempted a questionable prosecution of the Plaintiff (Petitioner) in the case, in his prior prosecutorial capacity, at that time. His words and actions, on the day he refused to recuse, coupled with rulings and the trial transcript, indicates both an appearance of bias, as well as an actual bias. Every ruling made in the current case went against Petitioner Parkerson.

In this year of 2009, in the case of **Caperton v. A.T. Massey Coal Co. Inc., (08-22) 556 US (2009),** Supreme Court Justice Kennedy, in his

writing for the majority, cited, **Withrow v. Larkin, 421 U.S. 35 47 (1975)** stating; "Under our precedents there are objective standards that require recusal when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Additionally, Justice Kennedy wrote:

> "...objective standards may also require recusal whether or not actual bias exists or can be proved...The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process."

This Petitioner submits in addition to what Justice Kennedy stated, that Due Process should require recusal where the Judge in a recent prior prosecutorial capacity, attempted to prosecute a party, especially with question brought up of malicious intent involved, where now that party is before him in a civil case, in his capacity to rule as Judge.

Petitioner had six points on appeal before the Arkansas Court of Appeals, which related back to the judge's discretion in his rulings given, even involving the lack of giving rulings, thus denying Petitioner the ability to reserve it on appeal. Not only does the court record of the trial and of the Court Rulings show the bias of this judge toward the Petitioner, as "slipped" by his reference to Petitioner as "defendant" in this case, in his Order denying a continuance of the trial date, **App. 24**, where the Petitioner was actually the Plaintiff, and not the Defendant, as in the prior case. The Judge was well aware of the circumstances involved between him and the

Petitioner, before he became the Judge in this case. **Arkansas Supreme Court Administrative Order No. 14, # 2;** "A circuit court judge to whom a case is assigned shall accept that case, unless he or she is disqualified or the interest of justice require that the case not be heard by that judge."

> The **Due Process Clause of the Fourteenth Amendment to the U.S. Constitution,** states that in certain circumstances, procedural due process, requires a judge to recuse himself on account of there being a conflict of interest. It states any citizen's right to a fair and impartial trial. "Judges are supposed to recuse themselves from cases when personal conflicts of interest may arise. If a judge has participated in a case previously as some other judicial role he/she is not allowed to try that case."

In the prior case, this Judge's role as deputy prosecutor, had accusations against him, by the current Petitioner, involving his inappropriate way he tried to achieve that prosecution. The Judge, in that prior case, who put a stop to the attempt to prosecute the Petitioner, was the Honorable Judge John Cole, who dismissed the case against the Petitioner, when she submitted the facts in her Motion to Dismiss. The Judge in the current case attempted a questionable prosecution of her, immediately before becoming the Judge over her civil case, with her as Plaintiff, which more than creates just an appearance of bias.

REASONS FOR GRANTING THE PETITION

The reoccurring and current topic, both in this U.S. Supreme Court, as well as among the public and private sectors, is the issue of the necessity for recusal of Judges in certain cases. I believe the Due Process Clause does set a standard for recusal of Judges, regardless of how vague or elusive it often appears when attempted to be applied. I submit that my case presents such a standard for the necessity of a Judge to be required to recuse. I expect, most believe it to already exist as being required in such circumstances as my case presents, though sadly it does not, as far as literally being required without question.

My case goes beyond the "appearance of bias" and can be seen as clearly defining the standard of bias in a well defined, particular set of circumstances; that being the Judge in a civil action, having just attempted to prosecute the Petitioner of the civil case, in a recent criminal case in his prior prosecutorial role, where question of malicious prosecution was brought up on issue, and the case dismissed, showing the failure of the now standing Judge to successfully prosecute this particular party, he is now ruling over from the bench, with discretionary rulings on submitted Motions left up to this very Judge.

Years ago, I was a Juvenile Court Counselor who worked with various Judges and attorneys in the justice system in creating and building our system here, as well as in other states besides Arkansas, along with alternatives for

troubled youths and families, such as the creation of a 24 hour children's center for non-violent youth instead of just putting them in jail. I saw the best and the worst on both sides of the bench, and I always wondered where we as a country could even begin to clean up the problems that exist. I saw individuals and families who had no faith or belief that the rights guaranteed to them in our U.S. Constitution even applied to them. They did not even expect to be listened to, or gain any fair ruling, much less respect the system itself. I saw them beaten down emotionally and spiritually, with their children adopting their Parents' same beliefs and attitudes of helplessness and hopelessness, and this is no exaggeration. And I can say, after all that has happened to me after being targeted for standing up to a very powerful attorney in my home-town in regard to some major unethical activity, that anyone working in the justice system cannot have a clue what it is actually like being prosecuted, and knowing why it was happening, when it had nothing to do with breaking any law. I had attempted to put a stop to that attorney creating a will for his client, who was not related to him, who was leaving a major sum of money to disadvantaged students at a small college in Arkansas, where the attorney redirected that money to him and his family as beneficiaries instead. He was also the administrator of that estate. Judge Tom Smitherman was the Probate Judge, and even though I filed a complaint with justification, the Judge dismissed my attempt. Later, that Judge's niece married that attorney's son. The

deputy prosecutor, Lynn Williams wrote false and malicious facts for the Judge in that Court, where the charges he read were incorrect, and he stated he could put me in jail for a year on my appeal. I was shaking and humiliated in front of a crowded courtroom. And I was having to act pro se, because no attorney would help me. Lynn Williams had stated incorrect facts about me, which would have prejudiced any Judge or jury against me. The first court had stated, that it was obvious my horses were well fed and cared for, but I was being found guilty of a charge of animal cruelty, because I had a crooked door on my barn and empty feed sacks by the door, inside. It was a metal barn of 25, 000 square feet. I was told by the attorney I had, that I had just been put through a "kangaroo court," and he stated what I already knew, that I was being targeted for doing what I believed was right.

Judge Smitherman did finally recuse himself, and noted that no Judge in the County would take the case against me in this matter. **App. 25**

The Honorable Judge John Cole, came from out-of-town, and saw what the prosecutor's office was attempting to do to me. He dressed them down, and dismissed my case, after I presented documented facts within my Motions. I knew that if I had gone to trial, I would have been railroaded for standing up against the unethical circumstances that go on in our town. I thank God, Judge John Cole did not let them succeed. Even Judge Hearnsburger, who had to correct Judge Lynn William's faulty Order, had

no business being the Judge in a case with me involved. She was the deputy prosecutor, when I was attacked one afternoon in a parking lot. The individual who did that, took a plea deal, which stated that if he ever broke probation within a six year time, he was to go to prison for a full six years. My injuries from that attack was a ruptured cervical disc, requiring surgery on my spine, by some very unethical neurosurgeons, who inserted a faulty experimental cervical disc, which was ceramic in nature, called the "Orthoblock," into my spine, as they did many others, before the FDA stopped them. The individual broke probation by attacking other individuals, being arrested, and yet nothing was ever done to him, thanks to Hearnsburger and others. Smitherman recused in that individual's case, since they were friends.

Though I could not get any help, I brought a lawsuit against the two neurosurgeons, pro se. Even the FBI got involved in an investigation of criminal charges against them. The Judge simply dismissed my case. However, I won an appeal by a unanimous decision of the then Arkansas Court of Appeals. After that, my Father died, and having been extremely close, for I have never respected another human being the way I did him, I contacted the Sheriff's Department to let them know, I would be gone for a month, leaving them the name and phone number of the one who would care for my three Thoroughbreds. I ordered the feed and alfalfa hay, and had it delivered the day before I left. The night I returned, was when I learned that

the Sheriff's Department had come to my farm, the day before my return, without a warrant and took my horses and equipment away. I was arrested and put in lock up, until a friend bailed me out. While I was there, waiting, I saw the deputy who loaded the feed in my car, as he worked a second job. He just looked at me and grinned. I had done nothing wrong, and they refused to tell me, why I had been arrested. After some time passed, they brought my horses back, with no instruction to do anything differently. Someone drove through my gates, after that, and even used an electric cattle prod on the backend of one of my horses, Dr. Cecil. And when the case was dismissed against me, the Honorable Judge Cole stated, that until that day, he had not known what the case was about. If it had not been for that Judge, I could have been sent to prison, when I had not done anything wrong at all. The Prosecutor, who was over Lynn Williams, actually represented the individual who attacked me, when he was still in private practice. And he was close friends with the attorney, I had stood up against. And it was Judge Smitherman's bench, that Lynn Williams filled. During this time, I got anonymous calls from well intending individuals, I did not know, stating that I was targeted, and those targeting me, were going to do what it took to discredit me, since I dared to stand up against the status quo. They would not tell me who, so I did not know, who, but I sure saw how. When my case was dismissed, and I had realized I had to get my horses off of my farm, so they could not be harmed, some individual(s) took a big red-haired

dog, put it on a sheet in my front farm driveway, and shot it, splattering the sheet with blood. I understood the message, that my chestnut red stallion would have been killed, if he had still been there. I was very much afraid, and still to this day, keep braces against my outside doors for protection. I can't even feel safe at my farm.

The doctors and their insurance company had deep pockets, so they kept the malpractice suit going for about 13 years, until my expert witness died. The Judge did not allow me the time to produce my other expert witness from Mayo Clinic, and again granted summary judgment to the defendant doctors. I appealed it and lost. One dissenting Justice on that Appeals Court wrote, that Ms. Parkerson has jumped through every hoop she has been given, and if she were in another State, she would have won. I lost, and it has affected me greatly both financially and physically. I also learned, that outside attorneys avoided practicing law in Garland County, Arkansas, due to its court system here as being biased. It is not like this is some secret. It is just a fact, that the good ole boy system is run to prevail.

This case does not simply involve a small adverse possession claim or the stealing of my Corvette. It involves the fact, that I tend not to have Constitutional rights acknowledged me in Hot Springs, Garland County, Arkansas.

Right after Judge Lynn Williams ruled against me in the case, now before this Supreme Court, he ruled in yet another case, against me, when the County certified property, where I had

a standing, on the other side of my same yard, and sold it for delinquent taxes, though I always double check with the county and have never been late or missed paying property taxes. The Assessor's Office stated it was their fault and issued a Correction Certificate to the State Land Commissioner, right after they sold it to someone else. I attempted to intervene in the case, since my property rights were being adjudicated, without me being joined or allowed to intervene. Judge Lynn Williams stated, acknowledging my standing in the property, but he dismissed my Motion to Intervene, with prejudice, which I now have on appeal with the Arkansas Appeals Court. Again, in that case, Judge Lynn Williams called for a Hearing only a few days before it took place, with no written notice, and I was denied the chance to be there, to defend. And if you look at the record in my case, you will see that I am never late with filings, and I double check with the court on rulings, and would not have missed that pretrial hearing, no matter what, if I had known it was taking place. However, we all know, if someone wants you to lose, and that someone is a judge, then you better know, you do not have a chance. Even afraid, I am not going to give up fighting for justice, in a town where justice is very hard to find. If I can cause a statute to be created, with the granting of my Petition and reversal of my case after briefing, which will help me and others, in other "good ole boy" towns, then it will be worth what I have had to suffer. Believe me, this is not even half of what has been going on here. The failure to recuse fails the "smell" test.

When I worked with the court system, I saw the best intentioned Judges regularly rule so over-the-top toward one child, than he would over another, depending on the standing of that child's family in the community. And I knew the circumstances involved, and knew the cases' biases in rulings in some, compared to others, and even the reasons causing those biases' very existence. I would watch while one Judge would rule in a case, where the attorney representing the party before the court, was a senior partner in the same law-firm as the Judge, who wanted to become a partner in that same firm. I saw one young person who was selling PCP (Angel Dust) get probation, while another was put in jail after being locked out of his foster home, for missing dinner, because of mowing a yard, he was told to mow, and then later badly beaten for not performing a sexual act on one of the older kids in jail with him. He had, in fact, never broken any law. I have seen such people crushed by the very system which has been entrusted to protect the very rights that have been denied them. And the only way, this is ever truly going to change, is to require the recusal of a judge, when common sense tells you he should not be wearing the robe in particular cases. This case, I present by Petition, is one such step, that could not only help countless numbers of individuals across our entire country, to feel and be guaranteed a more fair shake in our justice system, as seen as a fundamental right of each and everyone of us, but could also take the burden off of often too

overly critiqued Judges, who would not only have guidance, but would have the definite answer to follow in the question of needed recusal from a case.

I am not an attorney, and yet I know from experience, that if my Petition is granted, and the following brief found compelling enough to the High Court Justices, to reverse my case and change the rulings of the lower courts in this matter, that a guideline for Judges all over the country could be put into place and not only relieve the need for so many resulting appeals with questions of possible bias of Judges, but also be seen as a triumph of the people under the law, who could see and realize that the Court sincerely cares about their rights in receiving a fair trial. So many who are forced into the justice system, which is seldom seen as a picnic, could accept losing their case, if they believed they have sincerely been heard by someone who is impartial, neutral, with no conflict of interest, or past reason to rule a particular way toward a particular party, which is by theory what the **Due Process Clause of the Fourteenth Amendment of our United States Constitution** is all about. That the United States Supreme Court is seen as a Parent of the lower Courts, in making sure that its children play fairly with each other and with visiting children involved with them, as well. That a time comes when just leaving a decision up to the discretion of the lower courts' presiding Judge, in circumstances such as Petitioner's, in regard to whether he or she should recuse in a case or not, no longer makes sense, even to the most casual of observers, since so often it is hard for any human

being to fairly judge his own degree of bias, even by the most conscientious of Judges. And when the party who sincerely believes that the Judge is biased against him or her, whether it be true or not, that party will be, just as I was, very intimidated in even presenting their case. Whether it be for political reasons, financial reasons, or reasons of retribution, as sincerely seen by that party, it will be considered as affecting the outcome of the case, and in too many cases, that is in fact, the reality. When the bench is ruling in a case, where actual circumstances exist indicating the failure of a needed recusal, the complete denial of every Motion or the non-ruling of Motions, resulting in not preserving them for appeal, is left to the discretion of that Judge, which highlights just how unfair it relates. This is the job of the **Due Process Clause of the United States Constitution**; to protect our fundamental rights as citizens of this great country.

If the Court rules in my favor, it would establish the need to require Judges to recuse in this one particular type of circumstance, which would not only be appreciated by those parties in the same situation, but also by any legitimate Judges, who might find themselves questioning the bias of another judge, wondering if he or she should address it or not. It would establish a precedent to make it where it is mandatory for a Judge to recuse, when that Judge, presiding over either a civil or criminal case, was previously involved in a past prosecutorial capacity, in an attempt to prosecute a party in the current case. It would be set in stone, that a Judge in these particular circumstances would

be required to recuse. It would neither indicate that the Judge would in fact be prejudice against the party or not. However, it would eliminate the question, and at the same time, better indicate the Court's continuing efforts to see that Due Process Rights are not only upheld but strictly designated in regard to recusal in this well-defined circumstance. If this is done, it will eliminate the appearance, the perception, and in some cases, such as mine, the reality of a Judge's rulings with bias against a party for reasons other than the case itself. In my civil case, as Plaintiff, I was referred to as the "Defendant" by the Judge in a very important Order in the case, and I, indeed, felt like a Defendant being prosecuted. I was afraid, and it goes without saying, a Plaintiff in a civil case should not have to be afraid of the Judge on the bench. **App. 24**

In my case, the Arkansas Court of Appeals stated by Opinion of the case, that;

> "We see no abuse of discretion in Judge Williams' decision to stay on this case. A trial judge need not recuse in unrelated litigation simply because he or she prosecuted a party in another case. Parkerson had to show bias or prejudice on Judge William's part. She failed to do so."

I submit that these are the same Justices who denied my Motion to Correct the Record **App. 10** under the **Supreme Court Administrative Order #4**, with a simple denial and no explanation, when the incomplete transcript of the lower court proceedings,

is yet another due process right, denied Petitioner, as well as proof of an obvious action by the Circuit Court Judge, demonstrating his bias against me. The Appeals Court Justices failed to recognize the importance of not being intimidated and outright afraid of the Judge ruling in my civil case. And I do not know of any casual observer, who could have seen the Judge at his first hearing, Aug. 2005, in his robe, down in the courtroom by the parties, looking straight at the Petitioner, who, he had just failed in his attempt to prosecute, stating he was not going to recuse, while no court reporter was transcribing his words, as I, as Petitioner, sat there realizing, I did not have any chance at all to win my case with him as the presiding Judge, wondering if he might try some way to put me in jail, and not question the wisdom of the Appeals Court Justices in their statement about a Judge not needing to recuse, simply because he prosecuted that same party in another case. I respectfully submit, that any casual observer might find that concept to sound pretty detached from the reality of all circumstances involved. And if my Petition for Writ of Certiorari, which I only recently even learned how to spell, be granted, the U.S. Supreme Court will have the case to designate at least one standard under the Due Process Clause, which would always require the recusal of a judge, with solid definition of reason, leaving all who are sincerely interested in the rights of each and everyone of us, applauding this United States Supreme Court.

If the Judges of this highest of courts can truly realize that the perception of a Judge, in any local, by a party being ruled over by him or her, must be beyond reproach, if our system is to be seen as a legitimate institution for its people. This one case ruling could positively affect a multitude of citizens across our country, and would go toward supporting the belief that our stars and stripes fly for the quest of our justice system for fairness to all. It could be seen as the Parent Court making sure all parties need not be afraid to seek justice. After all, those who have lived and died to see our rights stand firm, meant this to, forever, be the case.

In high school, I wrote a very idealistic poem consisting of several pages, titled; "*Democracy, a Privilege or a Responsibility?*" And I say now, that our Justice System must answer that same question of privilege and responsibility to its people, so its people, in turn, can believe in and respect our Justice System. That can only be done, if the rule is set in place to strictly guide a Judge to recuse from a case involving a party he previously tried to prosecute, whether he failed or was successful in doing so. In Petitioner's case, he failed in his attempt with issues of malice raised. What I am submitting might be viewed as a small deterrent to the "good ole boy" system, which unfortunately is all too alive and well here in the South, and I imagine most other regions of our country, as well. It is often seen as a joke, except for those people who are having to live with it.

I never met a Judge who thought he was bias. And I never knew, but one or two

judges, who would ever entertain the idea of abusing his or her discretion, when it came to recusing or not, if he or she felt there might be reason of bias in the case before them. I believe that true judges are called to their profession. However, there are those, even no-doubt known to exist, by our highest of Judges, of some lower court judges, who should never have been allowed to wear the robe. And it is one such judge's actions who can ruin the credibility and respect for all other judges in the eyes of the general public, who only leaves one wondering why that type of judge is allowed to remain on the bench, or at the least, why he or she would be allowed to rule in cases where they have no business ruling. It is this, our **Due Process Clause of our Fourteenth Amendment to our United States Constitution** was designed to address for its own citizens' protection involving the rights to expect, demand, and indeed have, a fair trial.

It must be made understood, by all persons in our country, that fairness by way of due process is never a question of right and will strictly be complied with by our Courts. This case will take us one step closer to just that, and it is a simple case, where due process rights were totally denied the party, who asked this Judge to recuse. I pray the Court find reason to grant my Petition. And further, I pray, this court construct a statute, as a requirement to recuse, under the Due Process Clause, in this particular type of well-defined circumstance and not simply leave it to a judge's discretion, in a matter such as this, as was the case before.

Where a judge, who may not be able to, or prefer not to, recognize his own biases, for or against a particular party or group, involving such circumstances as Petitioner's Petition presents, might be stopped from causing an unintentional, or even intentional, miscarriage of justice, resulting in denial of Due Process Rights, which would, in essence, be denying respect for our U.S. Constitution, and is certainly justification for construction of such a well defined statute, spelling out that particular standard of requirement for recusal.

And if I may further ask, if this indeed turns out to be the case, because my whole life has led up to this moment with the purpose of making it positive for all of us, and if possible, I would so much like the created statute, under the Due Process Clause, to be named after my Father, Dr. Cecil Wayne Parkerson, for all the good he did for others, with over fifty years of practicing medicine here, and all he taught me in believing, that our Constitutional rights must never be taken for granted.

Respectfully submitted,

GAIL PARKERSON
Petitioner/*Pro se*
490 Bayshore Drive
Hot Springs, AR. 71901
501-262-3824

APPENDIX

Arkansas Court of Appeals
Division II
No. CA 08-174

Gail Parkerson Appellant	Opinion Delivered February 11, 2009 Appeal from the Garland County
v.	Circuit Court, [NO. CIV-2004-346 III]
Richard McMurtrey, Sandra McMurtrey, Ernie's Wrecker & Body Shop, Inc. and Warren Farr, Appellees	The Honorable Thomas Lynn Williams, Judge The Honorable Marcia Hearnsberger, Judge

AFFIRMED

D.P. MARSHALL JR., Judge

This adverse-possession case has returned for a decision on the merits. *Parkerson v. McMurtrey*, CA06-978 (Ark. App. 6 June 2007) (dismissing appeal without prejudice for lack of a final order).* Ms. Parkerson and the McMurtreys are neighboring land owners near Lake Hamilton. Ms. Parkerson claimed a disputed strip of land through decades of adverse use by her family and, in recent years, as the parking place for her Corvette. The McMurtreys had record title. The circuit court quieted title in the McMurtreys. Ms. Parkerson appeals. She raises a number of issues, which we consider

*Judge Lynn Williams presided over the trial and entered the original order in this case. On remand, Judge Marcia Hearnsberger presided and entered the amended and final order from which Parkerson now appeals.

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in two groups: the pre-trial issues about recusal, scheduling, and motions, and the issues at trial about matters of evidence and the merits. We also address Ms. Parkerson's post-trial motion, which covers some of this ground again.

The Facts. About fifty years ago, parkerson's parents bought land located at 490 Bayshore Drive. Twenty years later, Parkerson acquired her parents' land through a warranty deed. The Controys, the McMurtreys' predecessors in title, owned the adjoining property at that time. In 1990, Parkerson began parking her Corvette at a spot in front of her house, a spot located on the Conroys' land. The Conroy's never asked Parkerson to move her car. The Conroys sold their land to the McMurtreys in 2002. The McMurtreys asked Parkerson several times to move her car off their land, but she refused. Parkerson testified that she and her family had used and taken card of the disputed strip of property since she was a child. The McMurteys mowed around the car; they also began putting up posts to build a fence around their property. Parkerson removed the posts. Mr. McMurtrey eventrually had Ernie's Wrecker and Body Shop tow the Corvette from the property. That step led Parkerson to file this case, seeking her car back and an order quieting title based on adverse possession. The McMurtreys counterclaimed,

requesting an order quieting title in them based on their deed.

The Pre-Trial Motions. Parkerson argues that the circuit court erroneously denied several of her pre-trial motions. First, she claims that the circuit judge abused his discretion by refusing to recuse. Before taking the bench, Judge Williams was a deputy prosecutor and had pursued charges against Parkerson in an animal-cruelty case. The charges against her were eventually dismissed.

We see no abuse of discretion in Judge Williams's decision to stay on this case. *Rogers v. Rogers,* 80 Ark. App. 430, 442, 97 S.W.3d 429, 437 (2003). A trial judge need not recuse in unrelated litigation simply because he or she prosecuted a party in another case. *Cooper v. State,* 317 Ark. 485, 490, 879 S.W.2d 405, 408 (1994). Parkerson had to show bias or prejudice on Judge Williams's part. *Rogers,* 80 Ark. App. At 442, 97 S.W.3d at 437. She failed to do so. Hiss various rulings against her did not demonstrate bias. 80 Ark. App. at 443, 97 S>W>ed at 438. And Judge Williams's comment that Judge Switzer sent him this case as "payback" for several murder trials that Judge Williams had transferred to Judge Switzer likewise shows no bias. Judge Williams transferred those cases because he had been prosecuting them before he became a judge. Judge William's colloquial comment was directed at Judge Switzer and the administration of the court's business; it did not reflect any bias against any of the parties in this case.

Parkerson also argues that the circuit court

erred by not sending her written notice of the trial date in accordance with Rule of Civil Procedure 6c. First, while Rule 6 applies to hearings, Rule 40 governs trial settings. Second, Rule 40 does not require written notice of trial settings, though it is of course the better and near universal practice. Third, and dispositively, Parkerson had adequate notice of the trial date. The judge announced the trial date, as well as a pre-trial hearing date, in open court at an August 2005 hearing that Parkerson attended. *Harris v. State*,6 Arkansas. App. 89, 91-92, 638 S.W.2d 698, 699 (1982). Parkerson points out that, at the August 2005 hearing, the circuit judge misspoke and said that he was setting the trial for 17 April 2005, instead of 2006. But in context, the court's slip about the year was not misleading: the court had stated the correct trial date earlier in that same hearing. Moreover, April, 2005 had already passed, and the court gave the correct year when announcing the date of the March 2006 pre-trial hearing – a hearing at which Parkerson failed to appear.

Because the court failed to follow proper procedures, Parkerson argues, it should have granted her continuance motion. She sought this relief ten days before trial. She argued that, because she had no written notice of the trial date and thus did not know for sure when it was, she did not have time to prepare or subpoena her witnesses. She also pointed out her confusion about the court ordering the parties into mediation while keeping the trial date that was set at the August 2005 hearing. The circuit court denied her continuance motion. The court noted

that this case had been pending since 2004 and that Parkerson was informed in open court of the trial date. Parkerson had eight months to prepare for trial after the August 2005 hearing. Further, the mediation order was addressed at the March 2006 pre-trial hearing, which Parkerson did not attend, and the circuit court entered an order the week before trial dispensing with mediation. We see no abuse of discretion in the circuit court's denial of her continuance request. *Travis v. State,* 371 Ark. 621, 625, 269 S.W.3d 341, 344 (2007)

Parkerson next argues that the circuit court erred by not granting her motion to inspect the disputed property. Site visits are often helpful to the finder of facts. The decision rests however, within the circuit court's informed discretion. *McGraw v. Weeks,* 326 Ark. 285, 293, 930 S.W.2d 365, 370 (1996). In any event, Parkerson failed to get a specific ruling on her inspection motion. We therefore may not address the issue on appeal. *National Home Centers v. Coleman,* 373 Ark. 246m 249-51,__S.W.3d __, __ (2008)

Because Parkerson also failed to get rulings on her motions for summary judgment and judgment on the pleadings, we may not reach those issues either. *Ibid.*

Had she obtained adverse rulings, we would still affirm on these points. Because trial expands the record, the denial of summary judgment is unreviewable after a trial on the merits. *Rick's Pro Dive 'N Ski Shop, Inc. v. Jennings-Lemon,* 304 Ark. 671, 672, 803 S.W.2d 934, 935 (1991). While the denial of a motion for judgment on the pleadings that turns solely on the law and the undisputed facts pleaded my be reviewed on

appeal, *Estate of Hastings v. Planters & Stockmen Bank*, 307 Ark. 34, 818 S.W.2d 239 (1991), this adverse-possession dispute presented a thicket of contested facts. This case had to be tried.

The Merits. Parkerson claims that the circuit court erred in quieting title in the McMurtreys for two reasons. First, because the McMurtreys' Notice of Publication and Proof of Notice mistakenly recited that the disputed property was located in Mississippi County, she argues that the Garland County circuit court had no jurisdiction. We disagree. Neither the McMurtreys nor Parkerson strictly complied with the notice requirements of Arkansas Code Annotated § 18-60-503 (Repl. 2003). The McMurtreys' notice was defective, while Parkerson filed no notice at all. But the parties' errors and omissions did not undercut jurisdiction because all possible claimants to the disputed property were properly before the circuit court. *Boyd v. Roberts*, 98 Ark. App. 385, 392-93, 255 S.W.3d 895, 900 (2007).

Parkerson argues next that the circuit court erred in quieting title in the McMurtreys because she proved that she adversely possessed the disputed land. Parkerson certainly had a strong case. But she failed to offer proof of an essential element of her adverse-possession claim—exactly where the property she was claiming was located. *Robertson v. Lees*, 87 Ark. App. 172, 185-86, 189 S.W.3d 463, 471-73 (2004). Though a survey showing a legal description of the disputed property was marked for identification, Parkerson failed to introduce it into evidence. She also failed to move the admission of the deed to her property into evidence. In sum, as the circuit

court remarked, Parkerson"[was] not well-served in acting as [her] own attorney." The McMurtreys, on the other hand, introduced a warranty deed and survey showing the boundary lines of their property. No clear error exists in the circuit court's order quieting title in the McMurtreys to the land described in those instruments, including the strip on which Parkerson had parked her Corvette. *Roberton,* 87 Ark. App. at 181, 189 S.W. 3d at 469.

Parkerson also argues that the court erred in refusing to allow her to read specific statements from Thelma Conroy's deposition into evidence at trial. Parkerson is right. Ms. Conroy was an important witness, one of the McMurtreys' predecessors in title. The court admitted the transcript and a videotape of Ms. Conroy's deposition into evidence. But the court refused to allow Parkerson to highlight points from the deposition during her case. The judge said that he would read the deposition in his chambers. In the event, the court rejected her claims as a matter of law mid-trial. The court did so based on Parkerson's failure to offer her deed into evidence, her lack of evidence about the disputed strip's legal description, and her lack of proof of title to the Corvette. The court later ruled for the McMurtreys at the end of their proof.

The court abused its discretion by not allowing Parkerson to present highlights of Conroy's testimony. Though the point is not pressed by Parkerson, the court also erred by not considering Conroy's testimony before deciding the case. These errors, however, do not justify reversing the judgment.

Conroy's deposition testimony does not supply the missing essential element of Parkerson's claim: an adequate description of the disputed property claimed. Nor does the deposition undermine the McMurtreys' record titl. The absence of prejudice renders the evidentiary error harmless. *Madden v. Aldrich*, 346 Ark. 405, 422, 58 S.W.3d 342, 355 (2001). Parkerson, moreover, waived the circuit court's procedural error of ruling on less than all the record. It too resulted in no prejudice in any event.

Finally, we see no abuse of discretion in the circuit court's denial of Parkerson's motion for a new trial. *Dobson v. Charter Behavioral Health System of Northwest Arkansas, Inc.*, 335 Ark. 96, 108, 983 S.W.2d 98, 104-05 (1998). Her motions gave many reasons for another trial. But those that she asserts on appeal duplicate points already addressed—denial of a continuance, procedural irregularities, and recusal. As we found no reversal error in the court's ruling before and during trial, we likewise find no abuse of discretion after the fact. *Ibid.*

Affirmed.

KINARD and GLOVER, JJ., agree.

MANDATE AFFIRMED

Proceedings of February 11, 2009.

CA08-174
GAIL PARKERSON
APPELLANT

V. Appeal from Garland Circuit
(CIV-04-346-3)

RICHARD McMURTREY, SANDRA McMURTREY ERNIE'S WRECKER & BODY SHOP, INC. AND WARREN FARR
APPELLEES

This appeal was submitted to the Arkansas Court of Appeals on the record of the Circuit Court of Garland County and briefs of the respective parties. After due consideration, it is the decision of the Court that the judgment of the trial court is affirmed.

It is also ordered that the appellant pay the appellees $114.00 for brief costs in the appeal.

Kinard and Glover, JJ., agree.

In testimony, that the above is a true copy of the judgment of the Court of Appeals. I, Leslie Steen, Clerk, set my hand and affix the seal, this 10th day of September, 2009.

Leslie Steen, *sl*
Clerk

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

Leslie W. Steen, Clerk

June 4, 2008

Ms. Gail Parkerson
490 Bayshore Dr.
Hot Springs, Arkansas 71901

RE: CA 08 00714
Gail Parkerson
v.
Richard McMurtrey et al

Dear Ms. Parkerson:

The Arkansas Court of Appeals issued the following orders today in the above styled case:

"Appellant's motion and renewed motion to strike appellees' response to motion to correct the record is denied. Appellant's pro se motion to correct the record is denied. Appellant's pro se motion for brief time is granted. Brief due within thirty days. Robbins, J., not participating."

Sincerely,
Leslie W. Steen, Clerk, *sl*

LWS: sc
cc: Janet Kay Moore
Ralph C. Ohm
Ernie's Wrecker & Body Shop, Inc.

IN THE CIRCUIT COURT OF GARLAND COUNTY,
ARKANSAS CIVIL DIVISION

GAIL PARKERSON)
Plaintiff/Counter-Defendant

Vs. Case No. Cv-2004-346-III

)
RICHARD G. MCMURTREY,)
SANDRA MCMURTREY; ERNIE'S)
WRECKER & BODY SHOP, INC.:)
AND JOHN DOE 1 AS GARLAND COUNTY,)
ARKANSAS, AND JOHN DOES 2-5)
Defendants

)
RICHARD G. MCMURTREY)
Counter-Plaintiff

)

FILED OCT. 8, 2007
Time 10:15
VICKIE RIMA
BY_____D.C.

AMENDED
ORDER

Now on the 17th day of April, 2006 came to be heard the Complaint of the Plaintiff, Gail Parkerson, and the Counterclaim of the Defendant, Richard G. McMurtrey, and the Plaintiff, Gail Parkerson, appeared in person, pro se, and the Defendant's Richard G. McMurtrey and Sandra McMurtrey, appeared in person and by and through their attorney, Janet K. Moore, and Ernie's Wrecker & Body Shop, Inc. appeared

by and through its representative, Warren Farr, *pro se*, and this matter was presented to the Court upon the Complaint of Plaintiff, Gail Parkerson, the Counterclaim of Defendant Richard G. McMurtrey, the testimony of the witnesses, evidence introduced at hearing, statements of counsel, from all of which and other matters proof and things before the Court, the Court finds as follows:

1. On Plaintiff's Complaint for Quiet Title and Replevin, the Defendants Richard McMurtrey, Sandra McMurtrey and Ernie's Wrecker & Body Shop, Inc, are entitled to a directed verdict. That Plaintiff failed to make a prima facie case against any Defendant in this cause of action in that no evidence was introduced as to the identities of the John Doe Defendants No. 2-5 and that although Larry Williams, the County Judge testified the County did not claim an interest in the property, the Plaintiff failed to introduce sufficient evidence into the record as to the property claimed by Plaintiff to afford her relief on her Complaint the Complaint should be dismissed as to all Defendants.

2. On Richard G. McMurtrey's Counterclaim, the Court finds Richard G. McMurtrey is the lawful owner of the following described real property:

A Parcel of land in the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section 28, Township 3 South, Range 19 West, of the Fifth Principal Meridian, Garland County, Arkansas, and being more particularly described as follows:

Commence at the Southwast corner of said NW ¼

NE ¼; Thence North along East line of said NW ¼ NE ¼ for a distance of 883 feet to ½" iron pipe on the South side of Bayshore Drive; Thence North 58 degrees 33'07" West, 30.47 feet to a cotton picker spindle and the Point of Beginning; Thence North 77 degrees 39'45 West, 187.00 feet to a cotton picker spindle; Thence 122.81 feet along a curve to the left having a radius of 57,27 feet and a chord bearing South 33 degree 39'53" West, 100.60 feet to a ½" iron pipe; Thence South 17 degrees 46'45" East, 86.96 feet to a ½" iron pipe; Thence South 12 degrees 06'45" East, 140.00 feet to a cotton picker spindle in the centerline of Bayshore Drive; Thence along said centerline 194.48 feet on a curve to the right having a radius of 147.89 feet; and a chord bearing North 54 degrees 13'25" East, 180.77 feet to the Point of Beginning.

3. That title to the property described Paragraph 2 above should be quieted and confirmed in Counter Plaintiff, Richard G. McMurtrey, subject to a private easement for ingress and egress over a gravel driveway shown in the survey of R. L. Smith, PLS # 1317, dated June 28, 2002 which survey is attached hereto as Exhibit A and incorporated by reference herein.

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED THAT:

1. Defendants' Richard McMurtrey, Sandra McMurtrey and Ernie's Wrecker and Body Service, Inc.'s Motions for Directed Verdict against the Plaintiff on her Complaint for Quiet Title and Replevin be and they are hereby

granted. Plaintiff's Complaint is dismissed as to all Defendants.

2. That title to the real property described above be and it is hereby quieted and confirmed in the Defendant/Counter Plaintiff, Richard G. McMurtrey, subject to a private easement for ingress and egress over a gravel driveway as shown in the survey of R. L. Smith, PLS # 1317, dated June 28, 2002;

3. That the Counter Plaintiff is awarded his costs of the Counterclaim.

4. That this amended Order is entered nunc pro tunc to April 28, 2006.

Marcia Hearnsberger
MARCIA HEARNSBERGER
CIRCUIT JUDGE
Dated: 10-8-07

Prepared By:
JANET K. MOORE, PLC
Attorney at Law
1427 Central Avenue
Hot Springs, AR. 71901

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS

GAIL PARKERSON
PLAINTIFF

VS. NO. CV 2004-436 DIV. IV

RICHARD MCMURTREY, SANDRA MCMURTREY, ERNIE'S WRECKER & BODY SHOP, INC., AND JOHN DOES 1-5
DEFENDANT

ORDER DENYING MOTION FOR RECONSIDERATION

On this 15th day of October, 2007, comes on for consideration Plaintiff's Motion for Reconsideration. The Court finds as follows:

1. On October 8, 2007, a hearing was held on Defendant's Motion to Amend Order.

2. Plaintiff filed a Motion for Reconsideration with Incorporated Brief on October 12, 2007.

3. Plaintiff's Motion for Reconsideration is denied.

IT IS SO ORDERED.

Marcia R. Hearnsberger *sl*
MARCIA R. HEARNSBERGER
CIRCUIT JUDGE

10-16-07
Date

Distribution:

Ms. Gail Parkerson
490 Bayshore Drive
Hot Springs, AR. 71901

Ms. Janet K. Moore
Attorney at Law
1427 Central Avenue
Hot Spirngs, AR. 71901

FILED OCT. 16, 2007

Time 2:28
VICKIE RIMA
By _____ D.C.

IN THE CIRCUIT COURT OF GARLAND COUNTY,
ARKANSAS CIVIL DIVISION

GAIL PARKERSON
Plaintiff/Counter-Defendant

Vs. Case No. Cv-2004-346-III

RICHARD G. MCMURTREY,
SANDRA MCMURTREY; ERNIE'S
WRECKER & BODY SHOP, INC.:
AND JOHN DOE 1 AS GARLAND COUNTY,
ARKANSAS, AND JOHN DOES 2-5
Defendants

RICHARD G. MCMURTREY
Counter-Plaintiff

FILED APRIL 28, 2006
Time 1:32 PM
VICKIE RIMA
BY _____ D.C.

ORDER

Now on the 17th day of April, 2006 came to be heard the Complaint of the Plaintiff, Gail Parkerson, and the Counterclaim of the Defendant, Richard G. McMurtrey, and the Plaintiff, Gail Parkerson, appeared in person, pro se, and the Defendant's Richard G. McMurtrey and Sandra McMurtrey, appeared in person and by and through their attorney, Janet K. Moore, and Ernie's Wrecker & Body Shop, Inc. appeared by and through its representative, Warren Farr, *pro se*, and this matter was presented to the

Court upon the Complaint of Plaintiff, Gail Parkerson, the Counterclaim of Defendant Richard G. McMurtrey, the testimony of the witnesses, evidence introduced at hearing, statements of counsel, from all of which and other matters proof and things before the Court, the Court finds as follows:

1. On Plaintiff's Complaint for Quiet Title and Replevin, the Defendants are entitled to a directed verdict.

2. On Richard G. McMurtrey's Counterclaim, the Court finds Richard G. McMurtrey is the lawful owner of the following described real property:

A Parcel of land in the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section 28, Township 3 South, Range 19 West, of the Fifth Principal Meridian, Garland County, Arkansas, and being more particularly described as follows:

Commence at the Southwast corner of said NW ¼ NE ¼; Thence North along East line of said NW ¼ NE ¼ for a distance of 883 feet to ½" iron pipe on the South side of Bayshore Drive; Thence North 58 degrees 33'07" West, 30.47 feet to a cotton picker spindle and the Point of Beginning; Thence North 77 degrees 39'45 West, 187.00 feet to a cotton picker spindle; Thence 122.81 feet along a curve to the left having a radius of 57,27 feet and a chord bearing South 33 degree 39'53" West, 100.60 feet to a ½" iron pipe; Thence South 17 degrees 46'45" East, 86.96 feet to a ½"

iron pipe; Thence South 12 degrees 06'45" East, 140.00 feet to a cotton picker spindle in the centerline of Bayshore Drive; Thence along said centerline 194.48 feet on a curve to the right having a radius of 147.89 feet; and a chord bearing North 54 degrees 13'25" East, 180.77 feet to the Point of Beginning.

3. That title to the property described Paragraph 2 above should be quieted and confirmed in Counter Plaintiff, Richard G. McMurtrey, subject to a private easement for ingress and egress over a gravel driveway shown in the survey of R. L. Smith, PLS # 1317, dated June 28, 2002 which survey is attached hereto as Exhibit A and incorporated by reference herein.

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED THAT:

1. Defendants' Motion for Directed Verdict against the Plaintiff on her Complaint for Quiet Title and Replevin be and it is hereby granted.

2. That title to the real property described above be and it is hereby quieted and confirmed in the Defendant/Counter Plaintiff, Richard G. McMurtrey, subject to a private easement for ingress and egress over a gravel driveway as shown in the survey of R. L. Smith, PLS # 1317, dated June 28, 2002;

3. That the Counter Plaintiff is awarded his costs of the Counterclaim.

Lynn Williams *sl*
LYNN WILLIAMS, CIRCUIT JUDGE

Dated: 28 April 2006

APPROVED AS TO FORM:

Janet K. Moore
JANET K. MOORE
Attorney for Defendants Richard G. McMurtrey and Sandra McMurtrey
1427 Central Avenue
Hot Springs, Arkansas 71901
(501) 318-0538

_____
Gail Parkerson
490 Bayshore Drive
Hot Springs, Arkansas

ERNIE'S WRECKER & BODY SHOP INC., Defendant

By:_____
Officer

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS

GAIL PARKERSON
PLAINTIFF

VS. NO. CV 2004-346 DIV. IV

RICHARD MCMURTREY, SANDRA MCMURTREY, ERNIE'S WRECKER & BODY SHOP, INC., AND JOHN DOES 1-5
DEFENDANT

ORDER

On this date the Court has reviewed the Court file, docket sheet, Plaintiff's Motion for New Trial with Renewed Motion to Recuse with Affidavit, Exhibits and Incorporated Brief, along with her Objection to Order with Incorporated Brief, and the Court finds as follows:

1. The comments of Plaintiff's Objection to Order are noted.

2. Plaintiff's motion for new trial and motion to recuse are denied.

3. The Court approves the Order prepared and submitted by Janet K. More from the April 17, 2006 trial.

IT IS SO ORDERED.

Lynn Williams, *sl*
LYNN WILLIAMS, CIRCUIT JUDGE

DATE; 28 April 2006

Distribution:

Gail Parkerson
490 Bayshore Drive
Hot Springs, AR. 71901

Janet Moore
Attorney at Law
1427 Central Avenue
Hot Springs, AR 71901

Warren Farr
Ernie's Wrecker & Body Shop
312 Lincoln
Hot Springs, AR 71901

FILED

APR 28, 2006

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS

GAIL PARKERSON
PLAINTIFF

VS. NO. CV 2004-346 DIV. 1V

RICHARD MCMURTREY,
SANDRA MCMURTREY, ERNIE'S
WRECKER & BODY SHOP, INC.,
AND JOHN DOES 1-5
DEFENDANT FILED APR 14 2006 10:08

ORDER

On this day comes on for consideration the Plaintiff's Motion for Reconsideration filed on April 13, 2006. The Court finds as follows:

1. The parties, including the Plaintiff personally, appeared in this Court on Augut 15, 2005. Three specific things were ordered and announced in open Court:

A) Mediation was ordered and was to be completed by January 30, 2006;

B) Pre-trial was set for March 13, 2006, at 9:00 o'clock a.m. and

C) Trial was set for April 17, 2006 at 9:00 o'clock a.m. These items are noted as a docket entry. No other notice of trial or pre-trial hearing was issued. There is no requirement that this notice be in writing or mailed.

2. This Court is unaware if mediation was ever initiated. On January 27, 2006, Plaintff filed

a Motion to Dispense with Mediation.

3. On February 2, 2006, the Court denied the motion and required a supporting financial affidavit to consider the motion. No supporting affidavit has been filed.

4. Pre-trial was convened at its appointed date and time. Plaintiff failed to appear. The other parties did appear.

5. On April 12, 2006, Defendant filed a Motion for Continuance of Mediation Deadline and/or Trial Date.

6. This Court denied that motion on April 13, 2006.

7. Plaintiff does not deny she was informed of the trial and pre-trial dates in open court.

8. This matter has been pending since March 2004.

Plaintiff's Motion for Reconsideration is denied.

IT IS SO ORDERED.

Lynn Williams, *sl*
LYNN WILLIAMS, CIRCUIT JUDGE
Date: 14 April 2006

Distribution:

Gail Parkerson
490 Bayshore Drive
Hot Springs, AR. 71901

Janet Moore, Attorney at Law
1427 Central Avenue
Hot Springs, AR 71901

Warren Farr, Ernie's Wrecker & Body Shop
312 Lincoln, Hot Springs, AR 71901

TOM SMITERMAN
Circuit Judge, Division 4
18th Judicial Circuit – East
501 Ouachita Avenue, Room 201
Hot Springs, Arkansas 71901
Telephone (501) 622-3760
Rheta Weston
Case Coordinator
Jana L. Hawley, CVR
Court Reporter

Ms. Donna Gay September 10, 2003

Ms. Donna Gay
Administrative Office of the Courts
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

RE: State of Arkansas v. Gail Parkerson;
Garland Circuit No. CR. 2003-257, Div. IV

Dear Ms. Gay:

I have recused in the above-styled matter due to prior involvement with the defendant. All of the other local judges decline to accept the case under our exhange agreement.

We are asking that a judge be appointed from outside of this county to hear this matter.

Thank you for your assistance.

Sincerely,
Tom Smitherman, *sl*
TOM SMITHERMAN
CIRCUIT JUDGE

Ts: rw
Pc: Mr. Steve Oliver,
Ms. Gail Parkerson

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

Leslie W. Steen
Clerk

April 1, 2009

Ms. Gail Parkerson
490 Bayshore Dr.
Hot Springs, Arkansas 71901

RE: CA 08 00714
Gail Parkerson
v.
Richard McMurtrey

Dear Ms. Parkerson:

The Arkansas Court of Appeals issued the following orders today in the above styled case:

"Appellant's petition for rehearing is denied."

Sincerely,
Leslie W. Steen, *sl*
Leslie W. Steen,
Clerk

LWS:sc

cc: Janet Kay Moore
Garland Circuit Clerk
(No. CIV-2004-346-3)

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

Leslie W. Steen
Clerk

September 10, 2009

Ms. Gail Parkerson
490 Bayshore Dr.
Hot Springs, Arkansas 71901

RE: 09-202. Gail Parkerson v. Richard McMurtrey et al.

Dear Ms. Parkerson:

The Arkansas Supreme Court made the following order today in the above styled case:

"Petition for review is denied."

Sincerely,
Leslie W. Steen, *sl*
Leslie W. Steen,
Clerk

LWS:jko
cc: Janet K. Moore
Warren Farr
Ralph C. Ohm
Vicki Rimi, Clerk
(CIV-04-346-3)

No. 09-679

Supreme Court, U.S.
FILED
JAN 7 - 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

GAIL PARKERSON,

Petitioner,

v.

RICHARD MCMURTREY, SANDRA MCMURTREY, ERNIE'S WRECKER & BODY SHOP, INC. & JOHN DOE NO. 1 AS GARLAND COUNTY, ARKANSAS,

Respondents.

On Petition For Writ Of Certiorari To The Arkansas Court Of Appeals

RESPONDENTS RICHARD MCMURTREY'S AND SANDRA MCMURTREY'S BRIEF IN OPPOSITION

RICHARD MCMURTREY
SANDRA MCMURTREY
Respondents/*Pro se*
1600 Whippoorwill Lane
Bentonville, Arkansas 72712
(479) 866-0970

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment was violated when the trial judge refused Petitioner's motion to recuse.

2. Whether the Due Process Clause of the Fourteenth Amendment was violated when the trial judge denied Petitioner's motions.

3. Whether the Due Process Clause of the Fourteenth Amendment was violated when the trial court's ruling was not reversed on the basis of Petitioner's claim the transcript was not complete on appeal.

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OPINION BELOW

The opinion of the state court that is the subject of this Petition is not published, but is located at Petitioner's Appendix 1.

STATEMENT OF JURISDICTION

The Petitioner asserts jurisdiction under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Respondent Richard McMurtrey purchased two tracts of land on Bayshore Drive in Garland County, Arkansas in 2002.

On March 26, 2004, the Petitioner filed suit against Respondents seeking to quiet title to a tract of land in Garland County, Arkansas. Respondent Richard McMurtrey filed a counter-complaint to quiet title to one of the parcels he purchased in 2002, which Respondents believed to be a part of the tract claimed by Petitioner.

The case was assigned to Division I of the Circuit Court for Garland County, Arkansas. In 2005, the case was transferred to Division IV on an exchange of cases with a recently appointed judge.

Petitioner moved for the Division IV judge to recuse. The motion was denied. Petitioner's motion

was based upon the assertion the judge had, two years previously, entered an appearance as a prosecutor in a separate criminal action against Petitioner in district court. The only evidence of the judge's participation in the criminal matter presented by Petitioner was a Motion to Dismiss Appeal filed by the judge while he was an assistant prosecutor.

Respondents and Petitioner appeared for trial of this case on August 16, 2005. The court continued the trial because of a schedule conflict. During that court appearance the judge announced and set a March 13, 2006, pre-trial date, an April 17, 2006, trial date, and ordered mediation. The Petitioner was present in court for the announcement and settings and participated in the proceeding.

All motions were to be argued March 13, 2006, at pre-trial. Petitioner did not appear at the pre-trial hearing to argue her pending motions. Trial was held as scheduled on April 17, 2006.

Respondents were granted a directed verdict at the close of Petitioner's case, the Petitioner not having offered into evidence a legal description or survey, or testimony showing the boundaries of the property which she claimed by adverse possession.

Respondent Richard McMurtrey presented his counter-complaint and the trial court quieted title to Respondent to the land he claimed.

Respondents disagree with the facts in Petitioner's Statement of the Case almost in its entirety

as to matters not raised at trial or on appeal. Because the discrepancies are too numerous to mention, a few are as follows:

i. There was an approximate two-year lapse in time between the trial judge's filing of a pleading in the prosecution of Petitioner on an unrelated criminal matter and receiving this case on exchange with Division I;

ii. Petitioner's adverse possession was not acknowledged nor documented;

iii. There were no extraordinary circumstances necessitating the recusal of the trial judge;

iv. The scenario described by Petitioner of the trial judge coming into the courtroom in his robe close to the parties, looking at Petitioner, and stating he was not going to recuse did not occur. There were no off the record statements by the trial judge at any time. It was not contained in the record, because the claimed event did not occur;

v. The Respondents further disagree with Petitioner's assertion she was not notified of the trial date. She was present at the time the court set and announced the trial date and pre-trial date and never disputed that fact. Petitioner received the same notice as all other parties and had sufficient time to subpoena witnesses;

vi. Motions made by Petitioner were not ruled on because Petitioner was not present to present her motions, even though she was told in court of the

pre-trial date and that all motions would be argued at the pre-trial;

vii. Petitioner did not request a jury trial under Ark. R. Civ. P. 38.

ARGUMENT

CERTIORARI IS NOT WARRANTED

The state court's failure to reverse on the issue of the judge's refusal to recuse is not in conflict with this Court's prior decisions and does not constitute a denial of Due Process under the Fourteenth Amendment.

Petitioner describes statements she said the trial judge made in an off the record communication to the parties in the courtroom. No unrecorded statements were made by the judge.

Respondents object to the inclusion of claimed events and facts not presented at trial, nor argued on appeal, and which have no bearing to this case or the Petition for Writ of Certiorari other than to cause confusion.

Respondents point out the following inaccuracies in the statements included in Petitioner's Reasons for Granting the Petition.

i. Petitioner alleges a malicious prosecution against her without any documentation or evidence of a malicious prosecution. No such evidence was

introduced at any level of the proceedings. The fact that a dismissal of the criminal case against Petitioner occurred does not mean the prosecution was malicious;

ii. The Petitioner described facts relating to her work as a counselor and made accusations against judges from prior unrelated and unidentifiable cases. Even if such cases existed, actions of other judges are not relevant to this case. Respondents object to the document at Petitioner's Appendix 25 being included in her Petition;

iii. The stories about malpractice claims, two neurosurgeons, and the FBI are raised for the first time and are not relevant to the issue of bias or lack of bias of the judge in this case;

iv. The allegations regarding anonymous calls from individuals and subsequent cases are not relevant and are mentioned for the first time in this brief.

In Arkansas a trial judge need not recuse in unrelated litigation simply because he or she prosecuted a party in another case. *Cooper v. State,* 317 Ark. 485, 490, 879 S.W. 2d 405, 408 (1994).

The reasons for judicial disqualification asserted by Petitioner in this case go to personal bias. Matters of kinship, personal bias, state policy, and remoteness of interest are matters of legislative discretion. *Tumey v. Ohio,* 273 U.S. 510, 523 (1927).

The judge had no direct or even remote financial interest in the outcome of Petitioner's case. Petitioner

believes the judge holds a personal bias against her and she relies solely upon the unrelated criminal prosecution and statements the judge never made.

That portion of Petitioner's argument relating to the state court's failure to reverse because her motions were denied is not a basis for certiorari. Petitioner failed to obtain specific rulings on her motions for a new trial and to inspect, and she did not preserve the issue for appeal. It is not a denial of Due Process.

That portion of Petitioner's argument relating to the state court's failure to reverse because she claimed the record on appeal was incomplete is not a basis for certiorari.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD MCMURTREY
SANDRA MCMURTREY
Respondents/*Pro se*
1600 Whippoorwill Lane
Bentonville, Arkansas 72712
(479) 866-0970

Supreme Court, U.S.
JAN 22 2010
OFFICE OF THE CLERK

No. 09-679

IN THE
Supreme Court of the United States

GAIL PARKERSON
PETITIONER

v.

RICHARD MCMURTREY, SANDRA MCMURTREY, ERNIE'S WRECKER & BODY SHOP, INC., & JOHN DOE NO. 1 AS GARLAND COUNTY, ARKANSAS
RESPONDENTS

On Petition for Writ of Certiorari
To the Arkansas Court of Appeals

Petitioner's Reply Brief

GAIL PARKERSON
Petitioner/Pro Se
490 Bayshore Drive
Hot Springs, Arkansas 71901
501-262-3824

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ARGUMENT

Petitioner Parkerson disagrees with most all statements made in Respondents' Statement of the Case, as well as in their Argument.

The Respondents' statement that the "Judge had, two years previously, entered an appearance as a prosecutor in a separate criminal action against Petitioner in district court," was very misleading. It was in the Circuit Court, not District Court, before Judge Smitherman. And the date the prior case was dismissed against Petitioner was May 19, 2004, while this civil case, with Petitioner as Plaintiff, began March 26, 2004.

The Respondents also stated that Petitioner did not offer into evidence a legal description or survey, or testimony showing the boundaries of the property which she claimed by adverse possession. However, the Judge refused to allow Petitioner to offer into evidence the showing of the boundary lines of the property of her claim by granting her Motion to Inspect the property. While the Respondents, according to their response to Petitioner's Motion, did not want the trial court to view the property. This included the major part of the property, not contested by Garland County, Arkansas, which was the old road bed, where Petitioner's 1978 Corvette was parked, before Respondents took it and destroyed it. The County Judge for Garland County, Arkansas testified at trial to going and viewing the property himself and submitting a sworn affidavit, that Garland County, Arkansas was not contesting Petitioner's claim of the old road bed,

(where her car had been parked since before 1980), as belonging to Petitioner as a part of her front yard. Even the Respondents' main witness by deposition, Mrs. Conroy, (Respondents' predecessor) supported the fact, that Petitioner's 1978 Corvette was parked in the old roadbed, along with other cars and visitors' cars that parked there as well. And the Respondent McMurtrey also testified, as was also noted in discovery, that Respondent was not claiming any of the old road bed. Petitioner had her surveyor there to testify in court as well as her own testimony in regard to the boundary lines, as well as her survey, and individuals testifying mowing within those boundary lines. Meanwhile, the surveyor for the Respondents, McMurtreys, stated in Court, he did not know where their boundary lines were located. Over Petitioner's Objection at trial, the trial judge abused his discretion by granting Respondents quiet title to property, they claimed beginning in 2002, which Petitioner and her Parents had held and claimed adversely, since 1959. The Judge further abused his discretion by allowing the Respondents to get by with the taking and destroying of Petitioner's car.

The Respondents argue that Petitioner was in court when the dates were set for a pre-trial Hearing and trial date. However, that was the same Hearing, where Petitioner was totally intimidated by the Judge, who came out into the courtroom, close to the parties' tables, and stated he was not going to recuse, while no transcript was being taken. Petitioner was reasonably shaken, since this Judge doing this had tried to have her put in jail in a prior case in his

prosecutorial capacity, which had just been dismissed by an out-of-town Judge. Petitioner was unaware that actual dates were set to be utilized, when it was confusingly stated, that there would be mediation, with Respondents' attorney never proceeding with it. And it was later stated, by the Court, that indeed, no written notice for the pre-trial Hearing or trial date was sent by the Court as is always customary in Garland County, Arkansas court proceedings.

Respondents further misrepresented the following facts of their **Statement of the Case**;

"i" the time frame of the attempted prosecution of the Petitioner, in relation to when the prosecution, became the Judge in this case.

"ii" the Respondents' statement that "Petitioner's adverse possession was not acknowledged nor documented," was most certainly untrue, demonstrated not only by court documents offered into the record of notarized statements going back to and dated 1981, witness acknowledgments testified to at trial, including the deposition testimony of Respondents' main witness and predecessor, Mrs. Conroy, who fully testified to her knowledge of the Petitioner's constantly maintained adverse possession claim, from 1980 on, as well as Petitioner's own Parents having utilized the property, even <u>before</u> the Respondents' predecessors, had ever moved in, by Petitioner's Parents having used and developed the driveway with gravel as Respondents' main witness testified by deposition, but denied by the Judge, with abuse of discretion, in Petitioner's right to present as her evidence at trial. There was also the

testimony of Respondent McMurtrey himself, acknowledging Petitioner's claim. And there was Petitioner's own testimony in regard to her and her Parents' adverse possession claim from 1959 to the present, which was accepted as valid evidence in the similar Arkansas Appeals Court case of **McLaughlin v. Sicard, 63 Ark. App. 212, 977 S.W. 2d (1998).**

"iii." Respondents statement that there were no extraordinary circumstances necessitating the recusal of the trial judge is false, and was clearly demonstrated to the trial Court by Petitioner's Motion for Continuance of the Trial Date, Motion for New Trial, Renewed Motion to Recuse, and her Motions for Reconsideration, with Affidavits.

"iv." Respondents' statement that "the scenario described by Petitioner of the trial judge coming into the courtroom in his robe close to the parties, looking at the Petitioner, and stating he was not going to recuse did not occur, and that there were no off the record statements by the trial judge at any time,..." was a false statement, and could not be made by the Respondents, since they were not present at that Hearing to know if it happened or not, as the court record indicates, to have witnessed the Judge's questionable actions which took place. And since the McMurtreys are purported to be submitting their reply brief, "*pro se*, they cannot make statements of which they have no knowledge. Also, the court docket supports Petitioner, given the dates of the Judge's filed refusal versus when Petitioner found out. ***Riverside Marine Remanufactureres, Inc. v. Booth*, CA 05-367, Ark. Ct. of App. (Nov. 2005)**

"There is another reason why this

case should be reversed on this issue; the trial courts failure to make a record of the hearing on Riverside's motion *in limine* during which one of the statements at issue was supposedly made. ***Administrative Order # 4*** provides that, "[u]nless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it." (emphasis added) ***Arkansas Code Ann § 16-13-510*** **(Repl. 1999).** The Supreme Court has said that it strictly construes and applies ***Administrative Order # 4. Robinson v. State*** **, 353 Ark. 372, 108 S.W. 3d 622 (2003);** ***Bradford v. State*****, 351 Ark. 394, 94 S.W.3d 904 (2003)** emphasizing that a verbatim record of the proceedings is a requirement. Both the supreme court and this court have held that a party's silence on this issue at trial will not be construed as an implied waiver of the verbatim record requirement. ***Robinson, supra; Mattocks v. Mattocks*****, 66 Ark. App. 77, 986 S.W.2d 890 (1999).**"

"v." Respondents' statement that "Petitioner's assertion she was not notified of the trial date,...was present at the time the court set and

announced the trial date and pre-trial date and never disputed that fact," was false. By submitted Affidavit, Petitioner included the circumstances causing her to believe that no pre-trial Hearing date or trial date had been set, since there had been a decision made where Mediation would be attempted instead. The Judge's abuse of discretion was evidenced by every bias ruling going against Petitioner, even though she has no pattern of ever missing a deadline for filing on time or ever being late or absent from any Hearing held, except the one where she had no knowledge of one utilized, with no written notification by the Court, as admitted by the judge of the trial court in the record.

"vi." Respondents' statement that "Motions made by Petitioner were not ruled on because Petitioner was not present to present her motions,..." is false. Petitioner voiced her filed Motions at one Hearing after another, but could not gain rulings, demonstrating further proof of bias and the need for the judge to recuse, instead of just continuing to deny, dismiss, or leave unanswered her written, filed, and oral requests for rulings to her Motions.

"vii." Respondents' statement, that "Petitioner did not request a jury trial under ***Arkansas Rules of Civil Procedure, 38***, is misleading, given the fact, that in the beginning, Petitioner stated her desire for a trial by jury in one of her Court Pleadings. She could not request it under the ***ARCP, Rule 38***, when necessary, because she did not have the required days, before the trial date, to file under that rule, since she was not aware, that a trial date was being utilized. This is

yet another example of a "Catch-22" in this case.

Petitioner further argues with the statements made in **Respondents' Argument;**

Respondents stated, that the state court's failure to reverse on the issue of the judge's refusal to recuse is not in conflict with this Court's prior decisions and does not constitute a denial of Due Process under the Fourteenth Amendment. However, Due Process calls for a fair trial, and Petitioner was denied a fair trial with the refusal of the trial court judge to recuse, which does conflict with this Court's prior decisions, constituting a denial of Due Process under the Fourteenth Amendment.

Respondents again state, in their argument, that "Petitioner describes statements she said the trial judge made in an off the record communication to the parties in the courtroom, and (that) no unrecorded statements were made by the judge."

This was addressed by Petitioner in Respondents' "iv," on Petitioner's Argument P. 4.

Petitioner also submitted a "Bystander's Affidavit," to the Arkansas Court of Appeals of a witness attending that Hearing, who witnessed the Judge come down into the courtroom in his robe and speak to the parties, though he did not hear what was stated by the judge, directed at the Petitioner. That "bystander's affidavit" was filed in the record with Petitioner's Motion to Correct the Record, while on appeal. This was the first court she could ask to address this issue, since she feared confronting the residing judge, and also, because she did not learn, that the judge's

words were not recorded into the transcript of the record, until she received the transcript for appeal. Docket dates support Petitioner.

"Respondents object to the inclusion of claimed events and facts not presented at trial, nor argued on appeal, and which have no bearing to this case or the Petition for Writ of Certiorari other than to cause confusion." Petitioner argues such events were placed inside of Petitioner's "*Reasons why Petitioner's Writ for Certiorari should be granted,*" and those events are central and intertwined creating the necessity for the judge to have recused. They were included to inform of and clarify the circumstances and not submitted to confuse.

Respondents incorrectly pointed out what they want the court to see as "inaccuracies in the statements included in Petitioner's Reasons for Granting the Petition:

"i." Respondents state that "Petitioner alleges a malicious prosecution against her without any documentation or evidence of a malicious prosecution, (and) that no such evidence was introduced at any level of the proceedings."

Petitioner argues, that not only was documentation and evidence of a malicious prosecution submitted, but that Petitioner even submitted a filing from the prior case, which brought up that charge of "malicious prosecution" against her, by the individual who then became judge in the civil case, who refused to recuse.

Furthermore, Petitioner's filings in that prior case was obviously evidence enough to convince an "out-of-town appointed Judge, the Honorable Judge John Cole, to immediately dismiss the case

against her. Petitioner submitted those past filings, in this civil case, as evidence demonstrating more reason, than would be necessary to convince the average observer, that this judge should have, without doubt, recused himself, so Petitioner could have a fair trial.

Petitioner agrees with Respondents argument that, "The fact that a dismissal of the criminal case against Petitioner occurred does not mean the prosecution was malicious." However, Petitioner argues; it was the way the judge, who was then in his prosecutorial capacity, attempted the baseless prosecution, which made it highly questionable and malicious in her opinion. There was no legitimate case against the Petitioner, whatsoever. No facts were stated against her as her doing anything illegal, and yet, the civil judge, then as prosecution, continued to pursue the case, even as dropped and then brought again, against the Petitioner, before the Honorable Judge Cole dismissed charges against Petitioner.

"ii." Respondents argue that Petitioner should not have described facts relating to her work as a counselor.

However, Petitioner was submitting facts, in her *Reasons why her Writ for Certiorari should be granted*, to demonstrate her familiarity with the court system, her credible status as a past counselor of the Garland County Juvenile Court, and facts on how its granting could be useful in helping a broad spectrum of citizens across our country in regard to necessary recusal, which is what she understands was being asked of her.

As for the Respondents' objection "to the document at Petitioner's Appendix 25, being

included in her Petition," Petitioner argues, that Appendix 25, being a letter from the first residing judge over the criminal case to the Court Administrator for the State of Arkansas, stating that all Garland County Judges refused to take the case against Petitioner, and that it was also necessary for him to recuse as well, was made a part of this civil case record, by Petitioner, in giving more reason why this civil court judge should have recused as had been the pattern.

"iii." The "stories" which Respondents argue as "raised for the first time and are not relevant to the issue of bias or lack of bias of the judge in this case," by the Petitioner was submitted in her reasons to grant. Petitioner brought up her medical circumstances in regard to her physical and financial limitations in having to proceed *pro se* in this case, while refusing to allow the stealing of her car or front yard by denial of her rights. She filed an Affidavit, for the record, of a financial statement, though the trial judge falsely stated, she had not submitted an affidavit, further demonstrating his bias against her. The Record itself shows ridicule toward Petitioner by the Judge, as short and demeaning to Petitioner in her presentation of her case, while he was friendly and quite cordial to Respondents.

"iv." The Respondents argue that Petitioner's "allegations regarding anonymous calls from individuals and subsequent cases are not relevant and are mentioned for the first time in this brief.

Petitioner again points out, that she submitted these relevant statements in her *Reasons why her Petition for Writ of Certiorari should be granted,* after she learned her reasons were to indicate

how others would benefit from the questions being reviewed and answered by this court. Petitioner gave reason why granting could assure so many others could avoid having their Due Process rights denied them.

Respondents argue that "In Arkansas a trial judge need not recuse in unrelated litigation simply because he or she prosecuted a party in another case." ***Cooper v.* State, 317 Ark. 485, 490, 879 S.W.2d 405, 408 (1994)**. However, Petitioner submitted evidence of bias and prejudice against her by the trial court judge, which negates that example. Petitioner submitted her Motion to Correct the Record to the Arkansas Court of Appeals, under ***Arkansas Supreme Court Administrative Order #4***, which demonstrated a full violation of Petitioner's Due Process Rights, when a full transcript of the court proceedings were not available, which would have demonstrated, by record and transcript, the prejudicial actions of the judge toward the Petitioner.

"The Supreme Court has explained that "when the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from view, and we must presume the process was impaired." ***Vasquez v. Hillery*, 474 U.S. 254, 263, 106 S. Ct. 617, 623, 88 L. Ed. 2d. 598 (1986) (dicta) (citing *Tumey v. Ohio*, 273 U.S. 510, 535, 47 S. Cr. 437, 445 71 L. Ed. 749 (1927)**; see also ***Bolden v. State*, 262 Ark. 718, 720, 561 S.W. 2d 281, 283 (1978)**; "The proper administration of the law requires not only that judges refrain from actual bias but also that they avoid all

appearance of unfairness." **Code of Judicial Conduct, Canon 3 (c) (1972);** "judges should disqualify themselves when their impartiality "might reasonably be questioned."

Respondents argue that; "The reasons for judicial disqualification asserted by Petitioner in this case go to personal bias." Petitioner argues that judicial disqualification was necessary since it involved her right to a fair trial, under Due Process. The judge abused his discretion, given the questionable behavior toward the Petitioner, in the past, and now as Judge in this civil case.

Petitioner argues political and employment gains from the good ole boy system constitute financial gain for the judge to be bias against Petitioner, who does not solely rely on the questionably malicious prosecution of her, but also bias demonstrated by the court record and transcript, as well as the bias in favor of the Respondents, to the point of the judge asking one respondent, if he would like a directed verdict. When the trial judge appears to be representing the Respondents, it is obvious, he has abused his discretion, and his rulings should be overturned.

Respondents argue; "That portion of Petitioner's argument relating to the state court's failure to reverse because her motions were denied is not a basis for certiorari."

Petitioner argues, it is not the fact that the motions were denied which gave cause for reversal, as basis for certiorari. It is the fact, that Petitioner did not have a fair chance under this Judge to have her Motions fairly ruled upon, which ultimately denied her a fair trial by an impartial judge, giving basis for certiorari.

Petitioner points to every one of her Motions being denied, dismissed, or unanswered, as further proof of the perceived and actual bias of this judge's abuse of discretion, denying her a fair trial.

Respondents argue; "That portion of Petitioner's argument relating to the state court's failure to reverse because she claimed the record on appeal was incomplete is not a basis for certiorari."

Petitioner argues, that a full and complete transcript of court proceedings is required under ***Arkansas Supreme Court Administrative Order #4***, which would have served to further prove her case of bias and prejudice by this judge toward her. It all falls under the jurisdiction of this Court under **28 U.S.C. § 1257 (a)**. **(Arg. 5)**

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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